March 1995

RESEARCH ORGANIZATION session focus
Texas House of Representatives March 13, 1995

Texas Redistricting Cases Considered

A challenge to three of Texas' 30 congressional districts as being unconstitutionally racially gerrymandered, *Vera v. Richards*, is awaiting action by the U.S. Supreme Court. A lower court deadline for the Legislature to redraw the congressional districts to eliminate the alleged gerrymandering has been lifted pending action on the state's Supreme Court appeal.

Meanwhile, a suit challenging Texas' *legislative* districts as being racially gerrymandered has been filed in federal district court in Houston. Six of the nine plaintiffs in the suit, *Thomas v. Bush*, are also plaintiffs in the congressional-districts case. They are seeking a May 1, 1995, deadline for the Legislature to redraw the districts.

The plaintiffs in the *Vera v. Richards* lawsuit on congressional districts won a preliminary victory August 17, 1994, when a three-judge district court panel in Houston ruled that three congressional districts were unconstitutionally gerrymandered by race. The state had contended that the districts were not shaped solely by racial considerations, but to implement varied objectives, primarily protecting incumbent members of Congress.

The Houston court agreed with the plaintiffs, basing its decision on a U.S. Supreme Court ruling in a 1993 North Carolina case, *Shaw v. Reno*. The federal panel ordered the Texas Legislature to draw a new congressional reapportionment plan by March 15, 1995. The state appealed to the U.S. Supreme Court in October 1994.

Supreme Court Justice Antonin Scalia in December 1994 lifted the lower court's deadline pending resolution of the state's appeal. The Supreme Court has not yet said if will hear the state's appeal in the Texas case, but has agreed to hear racial gerrymandering appeals from Louisiana and Georgia this spring. A decision on those cases is likely in summer 1995.

The chair of the House Redistricting Committee, Rep. Delwin Jones, has said the 74th Legislature should redraw congressional boundaries during the current session in case the U.S. Supreme Court declares the existing congressional districts unconstitutional. Such a step would avert the need for a special session at the time of a ruling. Sen. Gonzalo Barrientos, chair of Senate redistricting, has said he agrees with Rep. Jones, that the Legilslature should examine the issue.

U.S. Supreme Court observers speculate that the court will delay action on the Texas case until it decides the Louisiana and Georgia cases. If it hears the Texas case, the court could take one of the following steps:

- Affirm the district court decision and send the Texas case back to the lower court to set a new deadline for the Legislature to draw a remedial plan;
- Summarily reverse the lower court decision and allow the current plan to stand as is;
- Decide to hear the case and set arguments for the court term that begins in October, or
- Return the case to the lower court with instructions for the court to devise a new opinion based on precedents established in Supreme Court rulings in the Georgia and Louisiana cases.

The Texas case differs somewhat from the racial-gerrymandering cases in North Carolina, Georgia and Louisiana, which all involve rural districts that stretch across the state. The three contested districts in Texas are in urban areas and are primarily single-county districts: Harris County in the case of Districts 18 and 29 and Dallas County in the case of District 30.

BACKGROUND

The *Vera v. Richards* challenge to the Texas congressional districts drawn in 1991 began in January 1994 when seven registered voters residing in four congressional districts in Houston and Dallas filed suit in U.S. district court in Houston. They alleged that the Legislature had drawn racially gerrymandered congressional districts, and challenged all 30 districts. The plaintiffs said the congressional plan represented an effort to "segregate the races for purposes of voting" without regard for traditional redistricting principles, such as compactness, contiguity, and respect for existing political and economic boundaries, and without other "sufficiently compelling justification" for disregarding those principles (*Vera v. Richards,* CA No. H-94-0277).

The suit followed a key U.S. Supreme Court decision on racial gerrymandering, *Shaw v. Reno*, 113 S. Ct. 2816, handed down in June 1993. The *Shaw* plaintiffs had attacked two congressional districts in North Carolina in which black voters were in the majority. The court found that redistricting plans may be challenged under the equal protection clause of the U.S. Constitution's 14th Amendment when a district's geographic irregularities and "bizarre" shape appear racially based and when such segregation disregards traditional redistricting principles and is not justified by compelling state interests.

The court sent *Shaw* back to a lower court panel, which held that while the districts were racially gerrymandered, the plan was constitutional because it was "narrowly tailored to further the State's compelling interest in complying with the Voting Rights Act." Another Supreme Court appeal has been filed.

The high court has agreed to hear two other racial-gerrymandering cases. Federal courts in Louisiana and Georgia have held that challenged congressional districts that are predominantly minority ("majority-minority") were unconstitutionally gerrymandered. The U.S. Supreme Court has agreed to hear the Louisiana case (*U.S. v. Hays, No. 94-558*) and the Georgia case (*Miller v. Johnson, No. 94-631*).

Similar challenges to congressional districts are proceeding through the lower courts. A Florida case remains in federal district court, and a three-judge federal panel in California has held that state's districting plan constitutional. The court said no racial gerrymandering claim exists when race is considered along with traditional redistricting principles such as compactness, contiguity and political boundaries.

Other challenges to Texas districts

Terrazas v. Slagle. Prior to the *Vera v. Richards* suit a federal court had rejected a Republican Party claim that Texas congressional districts were *politically* gerrymandered to help incumbents and to discriminate against minority groups in violation of Voting Rights Act Sec. 2. An Austin federal panel found in December 1991 that the Republican challengers offered insufficient evidence to support their charge (CA No. A-91-CA-428).

The panel noted, however, that the shape of District 30, the black-majority district in Dallas that had been challenged, "closely resembles a microscopic view of a new strain of disease, and has been the subject of well-deserved national ridicule as the most gerrymandered district in the United States."

The Austin federal panel issued a summary judgment April 5, 1993, finding no partisan gerrymandering in the congressional plan. The court said the plaintiffs did not make a legal claim and that no trial should be held (*Terrazas v. Slagle*, 821 F. Supp. 1162 (W. D. Tx 1993)).

Legislative districts. On January 25, 1995, a suit was in filed in U.S. district court in Houston challenging numerous legislative districts as unconstitutionally racially gerrymandered. Six of the nine plaintiffs challenging the state districts in *Thomas v. Bush* are plaintiffs in *Vera v. Richards*. They allege that the House and Senate plans are racially gerrymandered.

The plaintiffs have asked the court to declare the House and Senate plans unconstitutional and to prevent the state from holding the 1996 elections under the current districts. They have asked the court to give the Legislature until May 1, 1995, either to

redraw the legislative districts or to adopt a plan drawn by the plaintiffs, the court or a court master for the 1996 election cycle.

The suit challenges 13 of the 31 Senate districts and challenges House districts in Bexar, Dallas, El Paso, Fort Bend, Harris, Orange and Smith counties. The state sought a change of venue from Houston to Austin and requested a specific list of the House districts being challenged, in motions filed February 28, 1995.

The case has been assigned to the court of U.S. District Judge Sim Lake, and would be heard by Lake and two other judges, since three-judge panels hear all redistricting cases at the district court level.

In June 1991 the Texas Republican Party had challenged the House (HB 150) and Senate (SB 31) redistricting plans on the grounds of minority vote dilution and partisan gerrymandering.

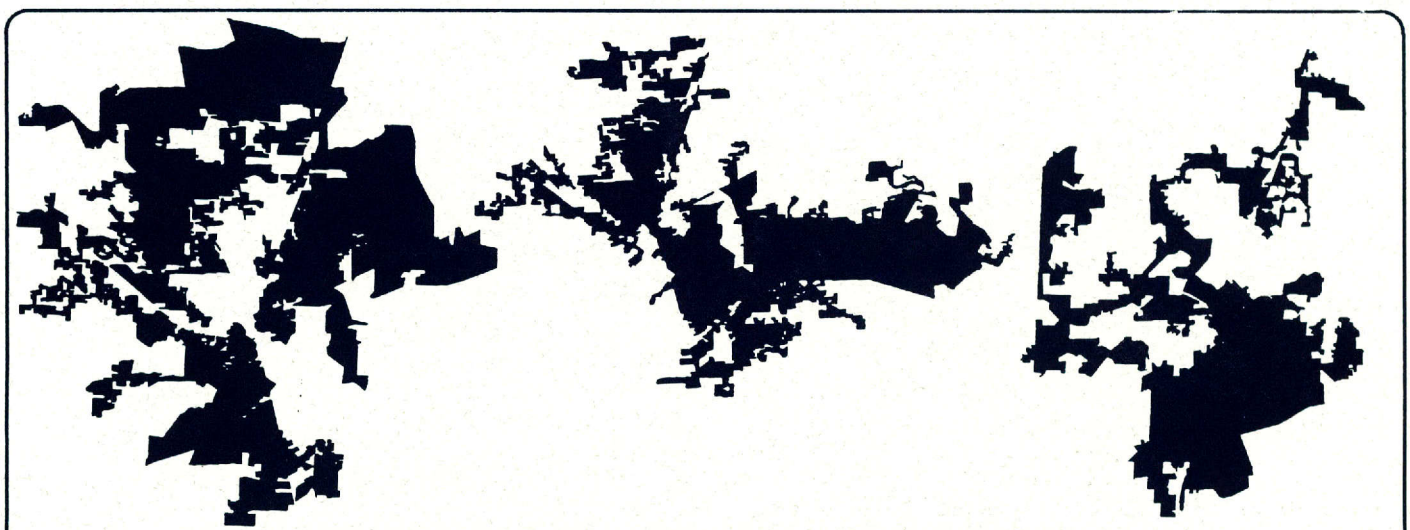
House. The U.S. Department of Justice objected to portions of the HB 150 plan under sec. 5 of the federal Voting Rights Act, effectively invalidating the plan. A three-judge federal panel imposed a temporary House redistricting plan for the 1992 election, changing certain districts in South Texas and El Paso County. In special session in January 1992 the Legislature left the plan in effect for the 1992 election but made changes in the court plan in South Texas and El Paso County to take effect starting with the 1994 election. The 1994 House plan (HB 1) was upheld by the U.S. Justice Department and the three-judge panel. This is the plan being challenged in *Thomas v. Bush.*

Senate. A federal court adopted its own Senate plan for the 1992 election, after the Texas Supreme Court rejected a state district court's attempt to substitute a plan for the one approved by the Legislature in 1991 (SB 31). The Legislature adopted the state court's plan (SB 1) during a special session in January 1992, but the federal panel kept its own plan in effect for the 1992 election. The U.S. District Court for the District of Columbia precleared the SB 1 plan under the Voting Rights Act sec. 5 and a federal court in Austin approved the plan for elections in 1994 and beyond.

Court views of racial gerrymandering

Shaw v. Reno. In its *Shaw* decision the Supreme Court viewed with disfavor districts whose "bizarre" shape is explicable only in terms of the race of its voters. Reviewing the North Carolina plan (*Shaw v. Reno,* 113 S. Ct. 2816), the court voted 5-4 to send the case back to a lower court for further consideration. The court said it would consider a district "highly irregular" if traditional districting principles were violated to separate voters on the basis of race. Justice O'Connor wrote the opinion, joined by Justices Rehnquist, Scalia, Kennedy and Thomas. Justices White, Blackmun, Stevens and Souter dissented.

Some legal observers have criticized the majority decision as giving states license to draw oddly shaped districts ("gerrymanders") to assist white incumbents while deterring them from drawing such districts in order to assist election of minorities. They note that in the Texas *Vera v. Richards* case, the federal panel allowed oddly shaped white-majority congressional districts while rejecting oddly shaped districts in



Texas Congressional Districts 18, 29 and 30: Challenged in Vera case

which minority groups were predominant. But other observers view the ruling as a needed step supporting use of previously established districting principles and discouraging states from creating racially segregated districts that would constitute an apartheid system.

North Carolina, which had no black-majority districts among the 11 drawn after the 1980 census, for the 1990s had created one majority-black district. After the U.S. Justice Department objected to the plan, a second "majority-minority" district was created, among 12 districts total. The new district extended about 160 miles across the state and was no wider than a highway in parts. That plan, approved by the Justice Department, was later attacked in court by the *Shaw* plaintiffs.

The federal court hearing the North Carolina case ruled on August 2, 1994, that the 160-mile long congressional district in North Carolina, although deliberately drawn along racial lines, was nevertheless constitutional because it helped remedy past discrimination against blacks. By 2-1 the panel said the district amounted to a racial gerrymander, but that its odd shape alone was not reason to void it.

The U.S. Supreme Court majority in *Shaw v. Reno*, in an opinion written by Justice O'Connor, said:

> "Today we hold only that appellants have stated a claim under the Equal Protection Clause by alleging that the North Carolina General Assembly adopted a reapportionment scheme so irrational on its face that it can be understood only as an effort to segregate voters into separate voting districts because of their race, and that the separation lacks sufficient justification."

The court agreed with the appellants' contention that if a reapportionment plan is so "bizarre" that it can only be explained in terms of race, it "demands the same close scrutiny that we give other state laws that classify citizens by race." The majority opinion said that a district would be considered "highly irregular" if it can only be explained in terms of separating voters on the basis of race, concentrates a dispersed minority population in a single district and disregards traditional districting criteria such as compactness, contiguity and respect for political subdivisions. The court said these criteria are not constitutionally required, but may be important in defeating a racial gerrymandering claim.

The court majority said if allegations of racial gerrymandering in a plan are not contradicted, the courts must examine the plan to determine if it is "narrowly tailored to further a compelling governmental interest." The court said race consciousness by legislatures "does not lead inevitably to impermissible race discrimination."

An issue not addressed by the court was whether a conflict exists between the Voting Rights Act's sec. 2, which permits challenges to voting practices on the grounds that they discriminate, and the equal protection clause of the 14th Amendment to the U.S. Constitution. The clause states, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States...nor deny to any person within its jurisdiction the equal protection of the laws." The clause was adopted in 1868 in part to end white supremacy laws.

The Voting Rights Act was enacted by Congress in 1965 to protect the rights of minority voters to vote in Southern states. Sec. 2 prohibits any practice that dilutes minority voting rights in any state and sets out how such a violation may be proved. Sec. 5 requires advance federal approval (preclearance) of changes affecting voting rights in Texas and other states in which minority voting rights have been denied. The act has applied to Texas since 1975.

Ethic Makeup of Districts 18, 29 and 30 Texas Congressional Delegation

	Anglo	*Black*	*Hispanic*	*Other*
District 18: **Sheila Jackson Lee, D-Houston**				
Total Population	31.3%	50.9%	15.3%	3.2%
Voting Age Population	35.2%	48.6%	3.7%	3.2%
District 29: **Gene Green, D-Houston**				
Total Population	27.8%	10.2%	60.6%	2.0%
Voting Age Population	33.4%	9.8 %	55.4%	2.1%
District 30: **Eddie Bernice Johnson, D-Dallas**				
Total Population	31.4%	50.0%	17.1%	2.4%
Voting Age Population	36.1%	47.1%	15.1%	2.4%

In a *Shaw* dissent, Justice White criticized the court majority's focus on a district's appearance and said the court should instead require "proof of discriminatory purpose and effect." He said the shape of a district does not bear on whether is it constitutional. White questioned the meaning of "narrowly tailored" and said determining such a standard is difficult when it is "divorced from any measure of constitutional harm."

Justice Souter said racial gerrymandering is harmless unless it dilutes a racial group's voting strength. In his dissent he said "scrutiny of racial gerrymanders under the 14th amendment is inappropriate because reapportionment nearly always requires some consideration of race for legitimate reasons." Justice O'Connor said in response that "legislation that cannot be understood as anything other than an effort to classify and separate voters by race injures voters in other ways." She said that classifying citizens by race "reinforces racial stereotypes and threatens to undermine our system of representative democracy by signaling to elected officials that they represent a particular racial group rather than their constituency as a whole."

Dissenting, Justice White, joined by Justices Blackmun and Justice Stevens, argued that the plaintiffs did not have a claim because they had not shown they were injured. He said, "Redistricting plans also reflect group interest and inevitably are conceived with partisan aims in mind. To allow judicial interference whenever this occurs would be to invite constant and unmanageable intrusion."

Hays v. Louisiana. On December 28, 1993, a three-judge federal panel in Shreveport, Louisiana, held that Louisiana's congressional redistricting plan violated the equal protection clause of the 14th Amendment to the U.S. Constitution based on the U.S. Supreme Court decision in *Shaw v. Reno*. The panel found that "the Plan in general and Louisiana's Congressional District 4 in particular are the products of racial gerrymandering and are *not* narrowly tailored to further any compelling governmental interest."

The congressional redistricting plan drawn by the Louisiana legislature in 1992, which was designed to increase the number of black House members from one of eight to two of seven, was challenged as racially gerrymandered and violating the equal protection clause. The *Shaw v. Reno* decision was pending, and the panel allowed the contested plan to be used for the 1992 elections.

In December 1993 the panel found the Louisiana plan to be racially gerrymandered and unconstitutional, based on the precepts in *Shaw*, and forbade use of the plan in future elections. The Louisiana legislature met in special session in April 1994 to draw a new plan, which was precleared by the U.S. Justice Department. The new plan was also declared unconstitutional by the panel, on July 25, 1994, and the state was directed to use districts drawn by the court. On August 11, 1994, the U.S. Supreme Court stayed the lower panel's decision and allowed the 1994 elections to be held under the legislature's plan.

The Louisiana federal panel found that the "bizarre and irregular shape of District Four raises the inference that the Louisiana Legislature classified its citizens along racial lines and segregated them into voting districts accordingly." The court found that race was the "fundamental factor" driving the legislation. The court found the plan to violate traditional redistricting principles of compactness, contiguity, and respect for political subdivisions.

The court did not accept the defendant's argument that "partisan/incumbent politics and socioeconomic commonalities" are compelling governmental interests that can justify racial classifications. The court also disagreed with the state's assessment that compelling state interests justified gerrymandering.

Miller v. Johnson. A Georgia congressional district was declared unconstitutional on September 12, 1994, by a three-judge federal panel. The panel said Georgia's 11th District could only be explained as "nothing but a far-flung search for black voters" and found that it was racially gerrymandered and that it violated the equal protection clause of the U.S. Constitution.

The 11th District was drawn by the Georgia Legislature to create a third black-majority district after the U.S. Justice Department refused to preclear two previous plans that contained only two such districts in the state, out of a total of 11.

The federal court panel concluded that the Georgia plan was not "reasonably necessary" to comply with the Voting Rights Act. Since no compelling state interest other than Voting Rights Act compliance was evident, the plan failed strict scrutiny under the 14th Amendment, the court said.

Vera v. Richards

The Texas Legislature redistricted the state in 1991, and created nine congressional districts in which minority groups were in the majority (two black, seven Hispanic) out of a total of 30 districts. Before the 1991 redistricting the state had 27 congressional districts, of which five had Hispanic majorities and one was considered a "black influence district" since its population was about 35 percent black.

A suit alleging that the new plan was racially gerrymandered and violated the equal protection provisions of the 14th Amendment was filed in U.S. district court in Houston on January 26, 1994. The plaintiffs, voters from congressional Districts 18, 25, 29 and 30, alleged that the plan unconstitutionally attempted to "segregate the races for the purpose of voting," without regard for traditional districting principles, sufficient justification and "narrow tailoring." The plaintiffs challenged all 30 districts, said the plan created "bizarre geographic configurations," and that it was the state's purpose and intent to create minority districts.

The plaintiffs later reduced the number of districts challenged to 24, exempting Districts 10, 11, 16, 17, 20 and 27 (Reps. Doggett, Edwards, Coleman, Stenholm, Gonzalez and Ortiz). The plaintiffs asked the court to consider if racial gerrymandering existed and, if so, whether the plan furthered a compelling governmental interest and was narrowly tailored to meet that interest.

The state, represented by the Attorney General's Office, said that the state concedes that race played a role in drawing the districts, but that it was not the only factor in drawing districts to give minorities a reasonable opportunity to elect candidates of their choice. The state agreed that it could have created "prettier" minority districts, but said it did not because of reasons independent of race, primarily incumbent protection.

Intervenors in the case on the state's side included the U.S. Justice Department, the NAACP Legal Defense and Educational Fund, Inc., and the League of United Latin American Citizens (LULAC) of Texas.

The judges concluded that Congressional Districts 18, 29 and 30 were "conceived for the purpose of providing "safe" seats in Congress for two African-Americans and an Hispanic representatives." The court said the districts "bear the odious imprint of racial apartheid, and districts that intermesh with them are necessarily racially tainted." They conceded that it would be impossible for the state to draw districts without some consideration of race and rejected the idea that the state should be prohibited from drawing predominantly minority districts. However, the court said, "appearances *do* matter" and that the state must consider "neighborhoods, communities and political subdivision lines" when redrawing districts. The court said:

> In 1991, the State of Texas deliberately redrew its Congressional boundary lines following the 1990 census with nearly exact knowledge of the racial makeup of every inhabited block of land in the state. This insight, worthy of Orwell's Big Brother, was attainable because computer technology, made available since the last decennial census, superimposed at a touch of the keyboard block-by-black racial census statistics upon the detailed local maps vital to the redistricting process. Not only did the state know the precise location of African-American, Hispanic, and Anglo populations, but it repeatedly segregated those populations by race to further the prospects of incumbent officeholders or to create "majority-minority" Congressional districts. The result of the Legislature's efforts is House Bill 1 ("HB1"), a crazy-quilt of districts that more closely resembles a Modigliani painting than the work of public-spirited representatives.

The court said racial gerrymandering is both unconstitutional and morally wrong. "To elevate racial classification as a basis for political representation inevitably defeats the principle of equality because it causes all society to become more, not less, race-conscious," the court said.

The state argued that the three districts were created in part to satisfy the state's duties under the Voting Rights Act (VRA), and therefore were justifiable under *Shaw*. The court said this was "a subtle but significant misreading. The state has "the burden of producing evidence of narrowly tailoring to achieve its compelling state interest," the court said. The state admitted that the three districts could have been drawn in a more traditional fashion, but that these districts would have sacrificed one or two incumbents. However, the court noted that incumbent protection does not have equal "compelling interest" as compliance with the VRA.

RACIAL GERRYMANDERING CHRONOLOGY

June 28, 1993
The U.S. Supreme Court, in a North Carolina case, *Shaw v. Reno,* rules, 5-4, that drawing bizarrely shaped districts to concentrate dispersed racial minorities is unconsitutional racial gerrymandering unless narrowly tailored to further a compelling governmental interest.

December 28, 1993
U.S. district court panel finds congressional districts unconstitutionally gerrymandered in *Hays v. Louisiana.*

January 28, 1994
Texas congressional districts are challenged for racial gerrymandering in *Vera v. Richards.*

August 17, 1994
Vera v. Richards panel holds three of Texas' 30 congressional districts unconstitutionally gerrymandered.

September 2, 1994
Vera panel allows the November 1994 congressional elections to be held using lines drawn in 1991, calls for Legislature to draw new plan by March 15.

September 12, 1994
U.S. district court panel rules Georgia congressional district racially gerrymandered (*Miller v. Johnson*).

December 9, 1994
The U.S. Supreme Court agrees to hear the Louisiana redistricting case.

December 23, 1994
U.S. Supreme Court Justice Antonin Scalia stays order for Texas to redistrict by March 15.

January 6, 1995
The U. S. Supreme Court agrees to hear the Georgia redistricting case along with the Louisiana case.

January 25, 1995
Six of the nine plaintiffs in *Vera v. Richards* file suit charging that some Texas legislative districts are racially gerrymandered.

The U.S. Justice Department said the state had a compelling interest in complying with the VRA and that Districts 18, 29 and 30 were "narrowly tailored" to further that interest. The Justice Department noted that *Shaw* said a jurisdiction might enact "affirmative action redistricting" if it had a compelling interest in eradicating particular instances of racial inequality. The court said, "No evidence was presented at trial to support this basis for minority districts, and we will not consider it further."

The court said it was "not obvious" that the state was justified in fearing liability under sec. 2 and sec. 5 of the VRA if it failed to establish certain minority-predominant districts. The court questioned the Justice Department's view, saying, "In the government's view, Texas could draw these districts in just about any bizarre shape as long as it attributed their shapes to incumbent protection or another 'nonracial' consideration."

"Because a *Shaw* claim embraces the district's appearance as well as its racial construction, narrow tailoring must take both these elements into account," the court said. "...to be narrowly tailored, a district must have the least possible amount of irregularity in shape, making allowance for traditional redistricing criteria."

In discussing the three districts individually, the court made the following points:

District 30. The court said it appeared that the Legislature intended to create a "safe African-American district in Dallas County. The judges found that the district is neither compact or contiguous and picks it way through Dallas excluding white neighborhoods while cherrypicking desirable African-Americans to arrive at a 50 percent African-American district.

The judges concluded that "the contours of Congressional District 30 are unexplainable in terms other than race. They have no integrity in terms of traditional, neutral redistricting criteria." The court said the district was "carefully gerrymandered on a racial basis to achieve a certain number of African-American voters; in order to protect incumbents, other African-American voters were deliberately fenced out of District 30 and placed in other districts that are equally untraditional districts."

"As even a cursory glance at the map of District 30 in isolation reveals, the district can really only be described here in the most general terms as its meanderings are too complicated and frequent to detail."

The court rejected the state's assertion that the district encompassed a community of interest and that the boundaries follow both natural and commercial land use boundaries. Incumbent protection, to the extent that it motivated the Legislature, was not a countervailing force against racial gerrymandering, the court said. Instead, racial gerrymandering was an essential part of incumbency protection.

Districts 18 and 29. The court said the Legislature attempted to create a "safe" Hispanic seat in the new Harris County District 29 and compressed black voters in District 18 so "the African-American community could continue to elect a candidate of its choice." The court said Districts 18 and 29 are even more "tailored" to include minority voters than District 30. The court noted that the number of precincts in Harris County nearly doubled following 1991 redistricting and that about 60 percent of the residents of Districts 18 and 29 live in split precincts.

The state said that since Districts 18 and 29 included residents of similar socioeconomic background and were fully within Harris County they were sufficiently compact. The court disagreed and found Districts 18 and 29 to be a product of unconstitutional gerrymandering because they were "formed in utter disregard for traditional redistricting criteria and because their shapes are ultimately unexplainable on grounds other than the racial quotas established for those districts..."

LEGISLATIVE RESPONSE

The possibility that the Legislature may redraw Texas' congressional boundaries on a contingent basis, in case the existing plan is declared unconstitutional, was raised by Rep. Delwin Jones, chairman House Redistricting Committee, at the initial meeting of the committee on January 31. This would avoid a special session of the Legislature on redistricting, should the Supreme Court rule against the state after the regular session ends May 29. Sen. Gonzalo Barrientos, chairman of the Senate Redistricting Committee, publicly agreed, but his committee has not initiated work on a plan.

Rep. Jones said the committee may consider congressional-districting changes unrelated to the three controversial districts. For instance, some Panhandle lawmakers have said they would like to change the plan so that districts do not divide the cities of Lubbock, Amarillo and Pampa. Rep. Jones indicated that the House committee would also consider technical redistricting changes, such as eliminating precincts that contain no voters ("zero population" districts).

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